

representation. The affidavit will contain a factual description of the employee's duties and responsibilities at the time of the incident and should describe the incident in question. Upon receipt of such information, the Regional Counsel will make a preliminary determination as to whether such suit comes within the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316. The Regional Counsel will refer the matter to the appropriate U.S. Attorney with a recommendation as to whether the employee is eligible for protection under 28 U.S.C. 2679 or 38 U.S.C. 7316. The U.S. Attorney will decide whether the Department of Veterans Affairs employee is eligible for the protection. The Regional Counsel will submit to the General Counsel a preliminary report in duplicate containing the information furnished the U.S. Attorney. In all such cases, the Regional Counsel will conduct a complete investigation of the facts and law. Two copies of the investigation report will be sent to the General Counsel and one copy will be sent to the appropriate U.S. Attorney. The General Counsel, through the Regional Counsel, will keep the employee advised of the action being taken concerning the suit. In the event that the U.S. Attorney or the Department of Justice determines that the employee is not eligible for immunization pursuant to one of the aforementioned provisions, the General Counsel's office, through the Regional Counsel, will advise the employee and will call to his or her attention the discretionary conditional indemnification provisions of section 7316(e) of title 38 U.S.C.

(d) Where a civil action is commenced in a State court against a Department of Veterans Affairs employee, and the matter is within the purview of either 28 U.S.C. 2679, or 38 U.S.C. 7316, the Department of Justice will be asked to remove such suit to the appropriate Federal District Court before trial, where it will be deemed an action against the United States. The defendant employee will be dismissed from the suit. After such removal, the United States has available all defenses to which it would have been entitled if the action had originally been commenced against the United States in the proper Federal District Court.

Should a Federal District Court determine that the Department of Veterans Affairs employee whose acts or omissions gave rise to the suit was not acting within the scope of his or her office or employment, and therefore not eligible for immunization as provided for in the aforementioned section, the case will be remanded to the State court from which it was removed, the employee will be reinstated as the defendant, and the United States will be dismissed from the suit. Where the employee has been reinstated as the defendant under such circumstances, in order to protect any rights which he or she may have under 38 U.S.C. 7316(e), he or she shall immediately notify the General Counsel, through the local Regional Counsel. Through the Regional Counsel, the General Counsel will call the employee's attention to the discretionary conditional indemnification provisions of section 7316(e).

(e) Under the authority of 38 U.S.C. 7316(e), the Secretary of Veterans Affairs may pay for monetary damages sustained by or assessed against an individual (or his or her estate) described in paragraph (a)(2) of this section, as the result of any suit instituted against such individual which is not cognizable under the provisions of 28 U.S.C. 2671-2680 because the individual was assigned to a foreign country, the said individual was detailed to a State or political division thereof, or the cause of action was specifically excluded under the provisions of 28 U.S.C. 2680(h); *Provided*, That the amount of damages sustained is reasonable when compared with similar cases, litigated or settled, and the United States was given a reasonable opportunity to defend such individual and to participate in settlement negotiations.

(Authority: 28 U.S.C. 2671-2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

[42 FR 41417, Aug. 17, 1977. Redesignated and amended at 61 FR 27784, June 3, 1996; 64 FR 47112, Aug. 30, 1999]

#### ADMINISTRATIVE SETTLEMENT OF TORT CLAIMS ARISING IN FOREIGN COUNTRIES

##### § 14.615 General.

(a) *Authority*. Section 515(b), title 38 U.S.C., provides that the Secretary of Veterans Affairs may pay tort claims,

in the manner authorized in the first paragraph of section 2672 of title 28 U.S.C., when such claims arise in foreign countries in connection with Department of Veterans Affairs operations abroad.

(b) *Action by claimant.* Claims for property loss or damage may be filed by the owner of the property or his or her duly authorized agent or legal representative. If the property was insured and the insurer is subrogated, in whole or in part, and if both the owner and the insurer desire to file a claim for their respective losses they should join in one claim. Claims for personal injury may be filed by the injured person or his or her agent or legal representative. Claims for death may be filed by the personal representative of the decedent or any other legally qualified person. When filed by an agent or legal representative, the claim must show the title or capacity of the person representing the claimant and be accompanied by evidence of the appointment of such person as agent, legal representative, executor/executrix, administrator/administratrix, guardian, or other fiduciary.

(c) *Time for filing.* A claim may not be allowed under 38 U.S.C. 515(b) unless it is presented to the Secretary or his or her designee within 2 years after the claim accrues.

(Authority: 28 U.S.C. 2671-2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

[38 FR 5473, Mar. 1, 1973, as amended at 42 FR 41417, Aug 17, 1977; 64 FR 47112, Aug. 30, 1999]

#### § 14.616 Form and place of filing claim.

(a) *Form of claim.* Claims arising under 38 U.S.C. 515(b) will be prepared in the form of a sworn statement and submitted in duplicate. The original copy of the claim will be sworn to or affirmed before an official with authority to administer oaths or affirmations and will contain the following information, at least:

(1) The name and address of claimant;

(2) The amount claimed for injury or death, and for property loss or damage;

(3) If property was lost or damaged, the amount paid or payable by the insurer together with the name of the insurer;

(4) A detailed statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or incident;

(5) If property was involved, a description of the property and the nature and extent of the damage and the cost of repair or replacement based upon at least two impartial estimates;

(6) If personal injury was involved, the nature of the injury, the cost of medical and/or hospital services, and time and income lost due to the injury;

(7) If death is involved, the names and ages of claimants and their relationship to decedent;

(8) The name and official position of the employee of the United States allegedly responsible for the accident or injury, or loss or damage of property;

(9) The names and addresses of any witnesses to accident or incident; and

(10) If desired, the law applicable to the claim.

(b) *Place of filing claim.* Claims arising in the Philippines under 38 U.S.C. 515(b) will be filed with the Director, Department of Veterans Affairs Regional Office, Manila, Republic of the Philippines. Claims arising in other foreign countries will be filed with the American Embassy or Consulate nearest the place where the incident giving rise to the claim took place.

(c) *Evidence to be submitted by claimant—*(1) *General.* The amount claimed on account of damage to or loss of property or on account of personal injury or death shall, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and the like will, if possible, be obtained from disinterested parties. All evidence will be submitted in duplicate. Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim. All documents in other than the English language will be accompanied by English translations.

(2) *Personal injury or death.* In support of claims for personal injury or death, the claimant will submit, as may be appropriate, itemized bills for medical, hospital, or burial expenses actually incurred; a statement from the claimant's or decedent's employer as to time